



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

MEDI-PLUS PHARMACY  
PO BOX 546  
BARKER TX 77413

#### **Respondent Name**

TEXAS MUTUAL INSURANCE CO.

#### **Carrier's Austin Representative Box**

Box Number 54

#### **MFDR Tracking Number**

M4-11-4386-01

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** The Requestor did not submit a Position Summary.

**Amount in Dispute:** \$1,460.82

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "Using the best information available to it, Texas Mutual has established an educated estimate for the pharmacy's U&C charges to customers outside the workers' compensation system and paid Medi-Plus Pharmacy those amounts because such amounts were lower than the formula amount in Rule 134.503(a). Texas Mutual recognizes that the pharmacy's actual U&C charge may be different (higher or lower) than Texas Mutual's estimated value. However, Medi-Plus Pharmacy has never provided any information to substantiate that the amount it charged Texas Mutual was in fact the U&C price for the drugs at issue despite Texas Mutual's best evidence that it was not."

**Response Submitted by:** Texas Mutual Insurance Co., 6210 E. Hwy 290, Austin, TX 78723

### **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Ordered
May 12, 2010 – July 7, 2010	LIDODERM HYDROCODONE GABAPENTIN BACLOFEN	\$730.41	\$0.00 MDR Waived
August 4, 2010 – October 5, 2010	LIDODERM HYDROCODONE GABAPENTIN BACLOFEN	\$730.41	\$730.41
TOTAL		\$1,460.82	\$730.41

## ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving a medical fee dispute.
2. Texas Labor Code §401.011(22) defines "health care provider" as a "health care facility" or "health care practitioner."
3. Texas Labor Code §401.011(19)(E) defines "health care" to include a prescription drug, medicine, or other remedy.
4. Texas Labor Code §401.011(20) defines "health care facility" as a hospital, emergency clinic, outpatient clinic, or other facility providing health care.
5. 28 Texas Administrative Code §134.503, adopted to be effective January 3, 2002; amended to be effective March 14, 2004, set out the reimbursement guidelines for pharmaceutical services applicable to this dispute and is the version used throughout this decision.
6. 28 Texas Administrative Code §133.20, titled *Medical Bill Submission by Health Care Provider*, sets out the billing requirements.
7. The services in dispute were reduced/denied by the respondent with the following reason codes: for dates of service:
  - W1 – Workers Compensation State Fee Schedule Adjustment.
  - 517 – Paid at est. U&C based on research, Labor Code Sec 413.043, and PFG, 28 Tex: Admin Code 134.503.
  - 891 – No additional payment after reconsideration.
  - 193 – Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly.

### **Issues**

1. Were all the services in dispute filed in the form and manner prescribed by the division?
2. Is Medi-Plus Pharmacy a health care provider?
3. Did the requestor establish the unusual and customary charge for the services in dispute?
4. Is the requestor entitled to additional reimbursement?

### **Findings**

1. 28 Texas Administrative Code §133.307(c) states, in pertinent part, that "[a]requestor shall timely file with the Division's MDR Section or waive the right to MDR." Rule 133.307(c)(1)(A) explains that "[a]request for medical fee dispute resolution that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute." This medical fee dispute was filed on July 28, 2011. The dates of service range from May 12, 2010 through October 5, 2010. The requests for medical fee dispute resolution for the dates of service May 12, 2010 through July 7, 2010 were not filed within one year and do not involve issues identified in Rule 133.307(c)(1)(B); therefore the requests for those dates of service do not meet the requirements of 28 Texas Administrative Code §133.307(c)(1)(A). Consequently, only the dates of service from August 4, 2010 through October 5, 2010 are eligible for review.
2. Review of the documentation submitted finds that Medi-Plus Pharmacy, the requestor in this medical fee dispute, is the health care provider because it is a health care facility as defined by the Texas Labor Code.
3. As stated above, the health care provider is Medi-Plus Pharmacy. Medi-Plus Pharmacy submitted numerous examples of amounts billed to workers' compensation carriers other than the respondent. In its review of these billing examples, the division noted amounts billed for pharmaceuticals that were the same or similar to those in dispute, and whether the dates of service were reasonably near the dates of service in dispute. Comparison of the billing examples to the medical bills, or DWC-66 forms, for the services in dispute supports that Medi-Plus Pharmacy billed its usual and customary charges to Texas Mutual Insurance Company for LIDODERM 5% PATCH (30 Units); HYDROCOD/APAP 10/325 TAB (240 Units); GABAPENTIN 400 MG CAPSULE (90 Units); and BACLOFEN 20 MG TABLET (90 Units), for the dates of service August 4, 2010 through October 5, 2010.

4. 28 Texas Administrative Code §134.503(a) states that “The maximum allowable reimbursement (MAR) for prescription drugs shall be the lesser of:
- (1) The provider’s usual and customary charge for the same or similar service;
  - (2) The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system (e.g. Redbook, First Data Bank Services) in effect on the day the prescription drug is dispensed.
    - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee = MAR;
    - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee = MAR;
    - (C) A compounding fee of \$15 per compound shall be added for compound drugs; or
  - (3) a negotiated or contract amount.

28 Texas Administrative Code §134.503(a)(1) is established by determining the provider’s usual and customary charge. Therefore, the billed amounts represent §134.503(a)(1) for each disputed drug.

The AWP formula described in 28 Texas Administrative Code §134.503(a)(2) is based on the average wholesale price determined by a nationally recognized pharmaceutical reimbursement system. Medi-Plus Pharmacy provided documentation in its request for dispute resolution to support that it utilized First Data Bank’s AWP’s, specific by NDC, to calculate the disputed pharmaceutical’s AWP formula amounts. The respondent did not provide documentation to sufficiently support that it calculated its own AWP formula amount, nor did it submit information regarding what, if any, nationally recognized pharmaceutical reimbursement system it may have used to calculate §134.503(a)(2). Consequently, the AWP’s supported by Medi-Plus Pharmacy are appropriate for calculating the AWP formula pursuant to §134.503(a)(2).

28 Texas Administrative Code §134.503(a)(3) is described as a “negotiated or contract amount.” Documentation submitted by both the requestor and respondent supports that no contract exists between Texas Mutual Insurance Company and Medi-Plus Pharmacy.

The maximum allowable reimbursement (MAR) is therefore determined by establishing the lesser of §§134.503(a)(1) and (a)(2) as follows:

Dates of Service	Prescription Drug	§134.503 (a) (1)	§134.503 (a) (2)	MAR is lesser of (a)(1) and (a)(2)	Carrier Paid	Due
August 4, 2010	LIDODERM 63481068706	\$256.70	$((7.7278 \times 30) \times 1.09) + \$4 = \$256.70$	\$256.70	\$211.92	\$44.78
September 7, 2010	LIDODERM 63481068706	\$256.70	$((7.7278 \times 30) \times 1.09) + \$4 = \$256.70$	\$256.70	\$211.92	\$44.78
October 22, 2010	LIDODERM 63481068706	\$256.70	$((7.7278 \times 30) \times 1.09) + \$4 = \$256.70$	\$256.70	\$211.92	\$44.78
August 4, 2010	GABAPENTIN 00228266711	\$183.50	$((1.5956 \times 90) \times 1.25) + \$4.00 = \$183.51$	\$183.50	\$111.18	\$72.32
September 7, 2010	GABAPENTIN 00228266711	\$183.50	$((1.5956 \times 90) \times 1.25) + \$4.00 = \$183.51$	\$183.50	\$111.18	\$72.32
October 22, 2010	GABAPENTIN 00228266711	\$183.50	$((1.5956 \times 90) \times 1.25) + \$4.00 = \$183.51$	\$183.50	\$111.18	\$72.32
August 4, 2010	HYDROCODONE 00591085305	\$206.40	$((0.67467 \times 240) \times 1.25) + \$4.00 = \$206.40$	\$206.40	\$124.92	\$81.48
September 7, 2010	HYDROCODONE 00591085305	\$206.40	$((0.67467 \times 240) \times 1.25) + \$4.00 = \$206.40$	\$206.40	\$124.92	\$81.48
October 22, 2010	HYDROCODONE 00591085305	\$206.40	$((0.67467 \times 240) \times 1.25) + \$4.00 = \$206.40$	\$206.40	\$124.92	\$81.48
August 4, 2010	BACLOFEN 00832102500	\$115.00	$((0.9867 \times 90) \times 1.25) + \$4.00 = \$115.00$	\$115.00	\$70.11	\$44.89
September 1, 2010	BACLOFEN 00832102500	\$115.00	$((0.9867 \times 90) \times 1.25) + \$4.00 = \$115.00$	\$115.00	\$70.11	\$44.89
September 30, 2010	BACLOFEN 00832102500	\$115.00	$((0.9867 \times 90) \times 1.25) + \$4.00 = \$115.00$	\$115.00	\$70.11	\$44.89
<b>TOTALS</b>				<b>\$2,284.80</b>	<b>\$1,554.39</b>	<b>\$730.41</b>

The total MAR for the services in dispute is \$2,284.80. The respondent paid a total of \$1,554.39; therefore the requestor is entitled to additional reimbursement in the amount of \$730.41.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$730.81.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §§413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor, within 30 days of receipt of this Order, the amount of \$730.81 plus applicable accrued interest pursuant to 28 Texas Administrative Code §134.130.

### **Authorized Signature**

_____	_____	March 16, 2012
Signature	Medical Fee Dispute Resolution Officer	Date

### ***YOUR RIGHT TO REQUEST AN APPEAL***

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a certificate of service demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**